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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,130	06/16/2006	Asa Melhus	1511-1050	1257

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YOUNG & THOMPSON
209 Madison Street
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EXAMINER

ROBERTS, LEZAH

ART UNIT	PAPER NUMBER
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1612

NOTIFICATION DATE	DELIVERY MODE
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07/23/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

Office Action Summary	Application No. 10/583,130	Applicant(s) MELHUS ET AL.	
	Examiner LEZAH W. ROBERTS	Art Unit 1612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24,32 and 33 is/are pending in the application.
- 4a) Of the above claim(s) 2,3,6-9,14,16,17,22-24,32 and 33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,5,10-13,15 and 18-21 is/are rejected.
- 7) ☒ Claim(s) 1,4,5,10-13,15 and 18-21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>See Continuation Sheet</u> . | 6) <input type="checkbox"/> Other: _____ |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :6/16/06, 6/25/07, 1/15/08, 1/16/08, 6/16/08 and 12/21/09.

DETAILED ACTION

Response to the Election of Species

Applicant's election of a gel formulation and a polymer foam support in the reply filed on April 26, 2010 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 2, 3, 6-9, 14, 16, 17, 22-24, 32 and 33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 26, 2010.

Claims

Claim Objections

Claims 1, 4, 5, 10-13, 15 and 18-21 are objected to because of the following informalities: an "A" should be inserted before "Wound" in claim 1 and "The" should be inserted before "Wound" in claims 4, 5, 10-13, 15 and 18-21. Appropriate correction is required.

Claim Rejections - 35 USC § 112 - Indefiniteness

Art Unit: 1612

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims make reference to a lattice-like reinforcement. It is not clear as to what applicant considers lattice-like. The addition of "like" makes the claims indefinite, because it is appended to a term that is otherwise definite, therefore modifying its function is unclear.

Claim Rejections - 35 USC § 102 - Anticipation

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1) Claims 1, 4 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Wuendisch (USP 5,000,950).

Wuendisch disclose a wound treating composition comprising a graft copolymer. The compositions comprise a polyhydroxyalkane, including xylitol (col. 2, lines 16-23, claim 5 and 9). The preparations are gels (col. 3, lines 18-30). The agent can be applied

Art Unit: 1612

to the location of the body to be treated, and optionally covered with gauze, encompassing claim 15. The reference anticipates the claim insofar as it discloses a wound care product comprising xylitol.

2) Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Katasuyama et al. (JP 2002-284604, Machine Translation).

Katasuyama et al. disclose compositions comprising xylitol used in conjunction with farnesol to repress bacterial and or fungal formation of biofilm (Abstract). The compositions may be used to treat wounds or burns (paragraph 0026 of machine translation). The reference anticipates the instant claim insofar as it discloses a wound care product comprising xylitol.

Claim Rejections - 35 USC § 103 - Obviousness

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

Art Unit: 1612

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1) Claims 1, 4, 5, 10-13, 15, 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fabo (USP 4,921,704) in view of Katasuyama et al. (JP 2002-284604).

Fabo discloses a wound dressing for use with exuding wounds comprising a porous hydrophobic layer adapted to directly contact the wound during use and an adjacent absorbent layer attached to said hydrophobic layer, said hydrophobic layer comprised of an elastic net-like porous reinforcing component substantially completely encapsulated by a soft and elastic hydrophobic gel while retaining the porosity of said reinforcing component, said hydrophobic layer thus including openings which permit wound exudate to pass through said hydrophobic layer to be absorbed by said outer

Art Unit: 1612

absorbent layer (Abstract), encompassing claim 10. The hydrophobic gel is a silicon gel (col. 2, lines 16-18), encompassing claims 5 and 13. The reinforcement may also be polyurethane foam, which encompasses claims 18 and 19.

The reference differs from the instant claims insofar as it does not disclose the compositions comprise xylitol.

Katasuyama et al. disclose compositions comprising xylitol used in conjunction with farnesol to repress bacterial and/or fungal formation of biofilm (Abstract). The compositions may be used to treat wounds or burns (paragraph 0026 of machine translation).

The reference differs from the instant claims insofar as it does not disclose the compositions are applied to a wound dressing.

It would have been obvious to one of ordinary skill in the art to have incorporated the xylitol comprising compositions into the gel of the dressing of Fabo motivated by the desire inhibit the formation of bacteria and fungus at the wound site as disclosed by Katasuyama et al.

2) Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fabo (USP 4,921,704) in view of Katasuyama et al. (JP 2002-284604) as applied to claims 1, 4, 5, 10-13, 15, 18 and 20 above, in further view of Ward (US 5,099,832).

Art Unit: 1612

Fabo in view of Katasuyama et al. is discussed above and differs from the instant claims insofar as it does not disclose the wound care product is sterile as a whole and is packaged in a sterile manner.

Ward discloses packaged adhesive dressings. The dressing is placed in a bacteria-proof pack, sealed and sterilized by conventional methods including using ethylene oxide or gamma irradiation.

The reference differs from the instant claims insofar as it does not disclose the wound care product comprises xylitol.

It would have been obvious to one of ordinary skill in the art to have packaged the wound care product of the combined teachings of Fabo in view of Katasuyama et al. motivated by the desire to inhibit the formation of bacteria on the wound dressing as suggested by Ward.

Claims 1, 4, 5, 10-13, 15 and 18-21 are rejected.

Claims 2, 3, 6-9, 14, 16, 17, 22-24, 32 and 33 are withdrawn.

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEZAH W. ROBERTS whose telephone number is (571)272-1071. The examiner can normally be reached on 8:30 - 5:00.

Art Unit: 1612

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick F. Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lezah W Roberts/
Examiner, Art Unit 1612

/Frederick Krass/
Supervisory Patent Examiner, Art Unit 1612